IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 190 OF 2002

Smt. Asha Yogesh Kanakia ..Appellant

versus

1. Krupal Ramesh Kanakia
2. Ramesh Manmohandas Kanakia ..Respondents

Appellant present in person.

Mr. N. R. Mody with Miss. Falguni Thakkar i/b. M/s. Rustomji & Ginwala for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 2ND FEBRUARY,2005

ORAL ORDER :

1. Heard Appellant, who herself is an Advocate and Advocate for the respondents.

2. The appellant had filed a suit claiming Rs.24,000/- from the respondents, one of whom

is the brother of her deceased husband and the other is the son of the said brother of her deceased husband. Claim was based mainly on nuisance caused to her by the respondents while they undertook

repairs work of the parapet wall. They erected bamboo structure and prolonged repair work for more than 180 days and could not complete it inspite of the order of the Court. According to the appellant - plaintiff she had to suffer and undergo mental agony and loss of peace during this period. There was trespass upon the property and her parapet wall was also damaged. Therefore she claimed Rs.24,000/-, which included Rs.11,000/- spent by her for engaging a special security guard in order to protect her property and children.

3. Advocate for the respondents pointed out that after filing the suit the original plaintiff obtained injunction restraining the defendants from entering her house and therefore the defendants had to obtain order from the court to carry out the repairs to the parapet wall.

4. The plaintiff - appellant took me through the plaint and the particulars of expenditure incurred by her. Admittedly, parties are closely related to each other and Advocate for the respondents pointed out that there were litigations between the parties even prior to the suit.

5. So far as other claim of the plaintiff is concerned, the court rightly rejected it. But only

claim of the plaintiff regarding expenses incurred by her for appointing Special Security Guard to protect her property and her children, is required to be allowed. 6. Plaintiff examined one Mr. Jagadambikaprasad Shivram Tiwari, who was proprietor of Navshakti Security Force and he has stated that the plaintiff has taken Security Guards from him. He had stated that he is paid for the services rendered. He produced and proved receipt (Exhibit 'E') in that regard which is for Rs.11,000/- and odd. Surprisingly enough there is no cross examination of this witness examined on behalf of the plaintiff. If it was the case of the defendants that there was already a security guard, then this witness should have been cross-examined at length, but no attempt is made to falsify him or challenge his integrity. Therefore, the facts remains, in the circumstances, as mentioned by the plaintiff that she was required to spend Rs.11,000/- or so for payment to the security guards. Since this claim is proved by the plaintiff, the court should have allowed atleast that much claim. Therefore, in the circumstances, I pass the following order:

ORDER

Appeal is partly allowed. Respondents will pay Rs.11,000/- (Rupees Eleven Thousand) to the plaintiff with proportionate costs of this Appeal.

2.2.2005 (D.G. DESHPANDE,J.)